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8 Harold Garner and

9 STEPHEN E. HOFFMAN
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14 California State Bar No. 90495
15 Attorney for Defendant
16 Monica Garner

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA
13 (Honorable Thomas J. Whelan)

14 UNITED STATES OF AMERICA,
15
16 Plaintiff,

17 v.

18 HAROLD GARNER and,
19 MONICA GARNER
20 Defendant.

Case No. 08-CR-1289-W

NOTICE OF MOTION AND
MOTION FOR DISCOVERY

DATE: June 23, 2008
TIME: 2:00 p.m.

21 TO: CAROL C. LAM, UNITED STATES ATTORNEY; AND
22 SHERRI WALKER HOBSON, ASSISTANT UNITED STATES ATTORNEY

23 PLEASE TAKE NOTICE that on June 23, 2008, at 2:00 p.m., or as soon thereafter
24 as counsel may be heard, the defendants, Harold Garner and Monica Garner by and
25 through their respective counsel, Howard B. Frank and Stephen E. Hoffman, will bring a
26 motion for discovery.

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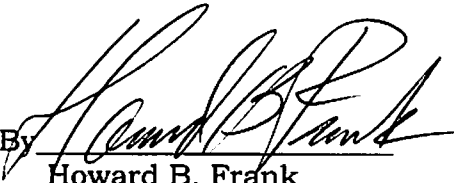
MOTION

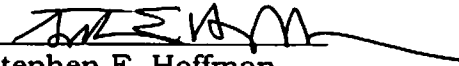
The defendants Harold Garner and Monica Garner by and through their respective counsel, Howard B. Frank and Stephen E. Hoffman, and pursuant to the provisions of Rules 12 and 16 of the Federal Rules of Criminal Procedure and the Fifth Amendment to the United States Constitution, hereby moves this court to compel discovery.

This motion is based upon the instant Notice of Motion, the attached Statement of Facts and Memorandum of Points and Authorities, the files and records in the above entitled case, and any and all other matters that may come to this court's attention prior to or at the time of the hearing on the motion.

Dated: 5-1-08

Respectfully Submitted,

By 
Howard B. Frank
Attorney for Defendant
Harold Garner

By 
Stephen E. Hoffman
Attorney for Defendant
Monica Garner

HOWARD B. FRANK
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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 (Honorable Thomas J. Whelan)

UNITED STATES OF AMERICA,

 Plaintiff,

 v.

 HAROLD GARNER and,
 MONICA GARNER

 Defendant.

Case No. 08-CR-1289-W

STATEMENT OF FACTS AND
 MEMORANDUM OF POINTS
 AND AUTHORITIES IN SUPPORT
 OF MOTION FOR DISCOVERY

I

STATEMENT OF FACTS

On April 24, 2008 the United States Attorney's Office for the Southern District of California filed a one count Information alleging Harold Garner and Monica Garner violated the narcotics laws of the United States.

Assistant U.S. Attorney Sherri Walker Hobson advised counsel that the basis of the charge is evidence acquired over the course of a lengthy investigation which included wire

1 interceptions of Harold Garner's telephones. Ms. Hobson further advised that the
2 discovery that will be provided in the case will consist of about 15,000 pages.

3 II

4 DISCOVERY

5 The defendant requests the government comply with Rule 16 of the Federal Rules
6 of Criminal Procedure, in its entirety, and the dictates of Brady v. Maryland, 373 U.S. 83
7 (1963). The government must disclose evidence favorable to the defendant. Defendant's
8 also requests the specific discovery listed below. This court must grant defendant's
9 specific discovery requests if the evidence requested affects the ultimate determination of
10 guilt or punishment. United States v. Agurs, 427 U.S. 97, 104 (1976). Because
11 defendant's request for information is specific, it gives the government notice of exactly
12 what the defendant desires. Id. at 106.

13 The request for the following specific discovery in no way limits the government's
14 obligation to produce all the documents in its possession discoverable under Rule 16 and
15 Brady v. Maryland:
16

- 17 1. Statements. All written and oral statements made by defendant. This request
18 includes, but is not limited to, any rough notes, records, reports, transcripts or
19 other documents and tapes in which statements of defendant are contained.
20 Defendant further requests the substance of any other oral statements, whether
21 made before or after arrest that the government intends to use at trial. These
22 are discoverable under Rule 16(a)(1)(A) of the Federal Rules of Criminal
23 Procedure (amended December 1, 1991) and Brady v. Maryland.
24
- 25 2. Prior record/other act evidence. All evidence, documents, records of judgments
26 and convictions, photographs and tangible evidence, and information pertaining
27 to any prior arrests and convictions or prior bad acts. Evidence of prior record
28

1 is available under Rule 16(a)(1)(B) of the Federal Rules of Criminal Procedure.
2 Evidence of prior similar acts is discoverable under Rule 16(a)(1)(C) of the
3 Federal Rules of Criminal Procedure and Rule 404(b), Federal Rules of Evidence
4 (as amended December 1, 1991) and Rule 609. Rule 404(b) now requires
5 reasonable advance notice of prior act evidence. This request also includes
6 defendant's rap sheet and/or NCIC computer check on defendant.
7

- 8 3. Seized evidence. All evidence seized as a result of any search, either
9 warrantless or with a warrant, in this case. This is available under Rule
10 16(a)(1)(C), Federal Rules of Criminal Procedure;
- 11 4. Agent's reports, notes, memos. All arrest reports, investigator's notes, memos
12 from arresting officers, sworn statements, and prosecution reports pertaining to
13 defendant. These reports are available under Rules 16(a)(1)(B) and (C); and
14 Rules 26.2 and 12(i), Federal Rules of Criminal Procedure;
- 15 5. Other documents/tangible objects. All other documents and tangible objects,
16 including photographs, books, papers, documents, or copies or portions thereof
17 which are material to defendant's defense or intended for use in the
18 government's case-in-chief or were obtained from or belong to defendant.
19 Specifically, defendant requests all documents, items and other information
20 seized pursuant to any search. This is available under Brady and Rule
21 16(a)(1)(C);
22
- 23 6. Bias of government witness. Any evidence that any prospective government
24 witness is biased or prejudiced against the defendant or has a motive to falsify
25 or distort his/her testimony. See Pennsylvania v. Ritchie, 480 U.S. 39 (1987);
26 United States v. Strifler, 851 F.2d 1197 (9th Cir. 1988);
27
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- 1 7. Prior record/other acts of government witnesses. Any evidence that any
2 prospective government witness has engaged in any criminal act whether or not
3 resulting in a conviction See F.R.E. Rule 608(b) and Brady;
- 4 8. Investigation of witnesses. Any evidence that any prospective witness is under
5 investigation by federal, state or local authorities for any criminal or official
6 misconduct. United States v. Chitty, 760 F.2d 425 (2nd Cir.), cert. Denied, 474
7 U.S. 945 (1985);
- 8 9. Evidence regarding ability to testify. Any evidence, including any medical or
9 psychiatric report or evaluation, tending to show that any prospective witness's
10 ability to perceive, remember, communicate, or tell the truth is impaired; and
11 any evidence that a witness has ever used narcotics or other controlled
12 substance, or has ever been an alcoholic. United States v. Strifler, 851 F.2d
13 1197 (9th Cir. 199); Chavis v. North Carolina, 637 F.2d 213, 224 (4th Cir. 1980);
14 United States v. Butler, 567 F.2d 885 (9th Cir. 1978);
- 15 10. Personnel files. It is requested that the government produce each government
16 agent's personnel file for review for information requested in paragraphs (7) –
17 (10) above and to determine whether there is any impeaching information
18 contained in the files, see United States v. Henthorn, 931 F.2d 29 (9th Cir.
19 1991);
- 20 21. Government witnesses. The name and last known address of each prospective
21 government witness. See United States v. Neap, 834 F.2d 1311 (7th Cir 1987);
22 United States v. Tucker, 716 F.2d 583 (9th Cir. 1983) (failure to interview
23 government witnesses by counsel is ineffective); United States v. Cook, 608 F.2d
24 1175, 1181 (9th Cir. 1979) (defense has equal right to talk to witnesses);
25 26 27 28

12. Other witnesses. The name and last known address of every witness to the crime or crimes charged (or any of the overt acts committed in furtherance thereof) who will not be called as a government witness. United States v. Cadet, 727 F.2d 1469 (9th Cir. 1984);
13. Favorable testimony. The name of any witness who made an arguably favorable statement concerning the defendant or who could not identify him or who was unsure of his identity or participation in the crime charged. Jackson v. Wainwright, 390 F.2d 288 (5th Cir. 1968); Chavis v. North Carolina, 637 F.2d 213, 223 (4th Cir. 1980); James v. Jag, 575 F.2d 1164, 1168 (6th Cir. 1978); Hudson v. Blackburn, 601 F.2d 785 (5th Cir. 1975);
14. Specific inquiries of agents. Defendant also requests that the government make specific inquiry of each government agent connected to the case for the above. United States v. Jackson, 780 F.2d 1305 (6th Cir. 1986); United States v. Butler, 567 F.2d 885,889 (9th Cir. 1978);
15. Statement by government of refusal to provide. If the government has any of the above-requested items but refuses to provide it to the defense, defendant requests that the government states what it is;
16. Rule 26.2 Material/Timing of production. Defendant requests that the government provide him with all material available pursuant to Rule 26.2, sufficiently in advance of trial or motions hearings so as to avoid unnecessary delay prior to cross examination;
17. Experts/resumes. The curriculum vitae of any and all experts the government intends to call at trial, including any and all books, treatises or other papers written by the expert which is relevant to the testimony;

1 18. Confidential informant(s) and related information. It is requested that the
2 government confirm the identity and number of informants involved in this
3 investigation or related to or in any way connected with this case. Also under
4 the authority of Rovario v. United States, 353 U.S. 53, 61 1967; (interest in
5 anonymity of informant must yield when disclosure is essential to fair
6 determination of a cause); United States v. Berumen, 542 F.2d 773, 775 (9th Cir.
7 1976) (percipient witness); Brady v. Maryland, 373 U.S. 383 (1963) and United
8 States v. Agurs, 427 U.S. 97 (1976), defendant requests production of the
9 following specific information:
10

- 11 (a) The nature and substance of any deals with any informants or
12 cooperating witnesses which the informants or cooperating witnesses
13 have been led to believe will accrue to them as a result of their
14 cooperation with the government;
15 (b) Information about the informant's or cooperating witnesses' criminal
16 records and other bad acts;
17 (c) Information about the informant's or cooperating witnesses' relationship
18 with defendant;
19 (d) Copies of the discovery in any pending criminal case of the informant or
20 cooperating witness about defendant;
21 (e) Statements which the informant or cooperating witness attributes to
22 defendant; and
23 (f) All other statements of the informant or cooperating witness made
24 during their arrest, after their arrest and during their cooperation.
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1 If any other informants or cooperating defendants are involved in this case, their
2 identities, criminal records and any promises, rewards, and benefits are also requested
3 pursuant to the above authority.
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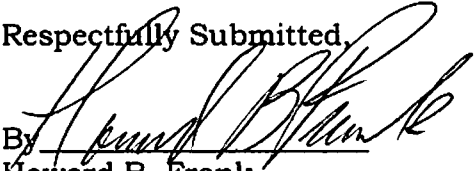
5 III

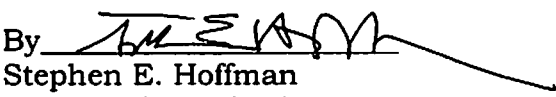
6 CONCLUSION

7 Based on the foregoing, it is respectfully requested the court grant this motion for
8 discovery.

9 Dated: 5-1-08

Respectfully Submitted,

10 By 
11 Howard B. Frank
12 Attorney for Defendant
Harold Garner

13 By 
14 Stephen E. Hoffman
15 Attorney for Defendant
16 Monica Garner
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